

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTHONY DALE, BRETT JACKSON,
JONNA FOX, BENJAMIN BORROWMAN,
ANN LAMBERT, ROBERT ANDERSON,
and CHAD HOHENBERY on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

DEUTSCHE TELEKOM AG et al.,

Defendants.

Case No. 22-cv-3189

Hon. Thomas M. Durkin

Hon. Albert Berry III

**NON-PARTY DISH NETWORK CORPORATION'S
MOTION TO MAINTAIN DOCUMENTS UNDER SEAL**

Pursuant to Federal Rule of Civil Procedure 26(c), Local Rules 5.8 and 26.2, and the Agreed Confidentiality Order ¶ 6 (Mar. 23, 2023), ECF No. 98, non-party DISH Network Corporation (“DISH”) respectfully moves for an order that DISH’s documents and information provisionally sealed by the Court in ECF Nos. 265, 291, and 300 be maintained under seal.

Background

1. On October 18, 2022, Plaintiffs issued a subpoena to non-party DISH. DISH timely and properly objected to the overbreadth and scope of Plaintiffs’ subpoena. In a show of good faith, DISH also made two document productions. These productions included DISH’s trade secret and confidential commercial information, including DISH’s confidential submissions to the Monitoring Trustee appointed to oversee DISH’s compliance with the terms of the Final Judgment entered in *United States v. Deutsche Telekom AG*, No. 1:19-cv-02232 (D.D.C. Apr. 1, 2020), ECF No. 85. Declaration of Clifford E. Yin in Support of Non-Party DISH Network Corporation’s

Oppositions to (I) Plaintiffs' Motion to Compel; and (II) Defendant T-Mobile US, Inc.'s Motion to Compel ¶ 18 (Apr. 11, 2025), ECF No. 285.

2. Among other things, DISH's productions included confidential information relating to internal business strategies; retail mobile wireless pricing, strategy, and marketing; subscriber acquisition and retention; 5G network buildout; spectrum acquisition and deployment; and DISH's contract with its eDiscovery vendor Lighthouse.

3. DISH appropriately designated the documents it produced to Plaintiffs as either Confidential or Highly Confidential-AEO under the Agreed Confidentiality Order.

4. Defendant T-Mobile issued a subpoena to DISH on November 18, 2024. DISH timely and properly objected to T-Mobile's overbroad subpoena. To date, DISH has not produced documents to T-Mobile pending resolution by the Court of DISH's and other subpoenaed non-parties' objections regarding the adequacy of the protections provided by the Agreed Confidentiality Order. Stipulated Schedule for a Joint Filing Regarding the Confidentiality Order (Mar. 20, 2025), ECF No. 250; Minute Entry (Mar. 21, 2025), ECF No. 251.

5. Plaintiffs shared DISH's document productions with T-Mobile. Defendant T-Mobile US, Inc.'s Motion for Leave to File Documents Provisionally Under Seal ("T-Mobile's Provisional Sealing Motion") at 1 (Mar. 21, 2025), ECF No. 258; Order re Protocol for the Production of Electronically Stored Information (ESI) ¶ 19 (Apr. 3, 2024), ECF No. 181.

6. On March 21, 2025, Plaintiffs and T-Mobile (the "Parties") filed simultaneous motions to compel DISH to produce documents in response to their respective subpoenas. Plaintiffs' Motion to Compel DISH to Produce Discovery Responsive to Plaintiffs' Subpoena (Mar. 21, 2025), ECF No. 253; Defendant T-Mobile US, Inc.'s Motion to Compel DISH Network Corp. to Produce Discovery Responsive to T-Mobile's Subpoena (Mar. 21, 2025), ECF No. 254.

7. Portions of the Declaration of Minae Yu in Support of Defendant T-Mobile US, Inc.'s Motion to Compel DISH Network Corporation to Produce Discovery Responsive to T-Mobile's Subpoena (Mar. 21, 2025), ECF No. 256, as well as Exhibit 3 to Ms. Yu's Declaration, reference or contain DISH's trade secret or confidential commercial information, including information relating to DISH's Boost Mobile ("Boost") retail wireless brand and DISH's internal business strategies, plans, and decisions. T-Mobile obtained this information either from DISH's counsel during the conferral process or from documents DISH produced to Plaintiffs and designated as Confidential or Highly Confidential-AEO under the Agreed Confidentiality Order. Exhibits 5, 19, 22, 23, 32, 33, and 36 to Ms. Yu's Declaration likewise contain DISH's trade secret or confidential commercial information. These exhibits are either communications from DISH's counsel containing DISH's confidential information or documents DISH produced to Plaintiffs and designated as Confidential or Highly Confidential-AEO under the Agreed Confidentiality Order, such as presentations containing confidential financial information and confidential information relating to DISH's retail mobile wireless strategy and subscriber retention and acquisition.

8. T-Mobile, recognizing the confidential nature of DISH's information that it included in Ms. Yu's Declaration and exhibits thereto, moved to file portions of Ms. Yu's Declaration and Exhibit 3, as well as the entirety of Exhibits 5, 19, 22, 23, 32, 33, and 36, provisionally under seal. T-Mobile's Provisional Sealing Motion at 1-2. The Court granted T-Mobile's Provisional Sealing Motion. Minute Entry (Mar. 25, 2025), ECF. No. 265.

9. DISH filed its opposition to the Parties' simultaneous Motions to Compel on April 11, 2025. Non-Party DISH Network Corporation's Memorandum in Opposition to Plaintiffs' and T-Mobile's Separate Motions to Compel (Apr. 11, 2025), ECF No. 283.

10. Portions of DISH’s Memorandum in Opposition, as well as portions of the Declaration of Jeffrey H. Blum (ECF No. 284), the Declaration of Michael L. Hastings (ECF No. 286), and Exhibit A to Mr. Hastings’s Declaration constitute, quote, or otherwise disclose DISH’s trade secret or confidential commercial information that DISH would designate as “Confidential” or “Highly Confidential Information” pursuant to the Agreed Confidentiality Order if produced, including information relating to the composition of DISH’s total number of retail mobile wireless subscribers and the costs charged to DISH by its eDiscovery vendor Lighthouse. DISH disclosed this confidential and trade secret information solely to respond to the Parties’ separate Motions to Compel.

11. DISH moved to file confidential and/or trade secret portions of its Memorandum in Opposition, Mr. Blum’s Declaration, and Mr. Hastings’s Declaration, as well as the entirety of Exhibit A to Mr. Hastings’s Declaration, provisionally under seal. Non-Party DISH Network Corporation’s Motion for Leave to File Documents Provisionally Under Seal (Apr. 11, 2025), ECF No. 288. The Court granted DISH’s motion. Minute Entry (Apr. 14, 2025), ECF No. 291.

12. On April 21, 2025, T-Mobile filed its Reply to DISH’s Memorandum in Opposition. Defendant T-Mobile US, Inc.’s Reply in Support of Motion to Compel DISH Network Corp. to Produce Discovery Responsive to T-Mobile’s Subpoena (Apr. 21, 2025), ECF No. 295. A portion of T-Mobile’s Reply contains DISH’s trade secret or confidential commercial information that DISH included in its Memorandum in Opposition. *Id.* at 9.

13. T-Mobile, recognizing the confidential nature of DISH’s information that it included in its Reply, moved to file a portion of its Reply provisionally under seal. Defendant T-Mobile US, Inc.’s Motion for Leave to File Documents Provisionally Under Seal (Apr. 21, 2025),

ECF No. 296. The Court granted T-Mobile's motion. Minute Entry (Apr. 22, 2025), ECF No. 300.

Legal Standard

14. Fed. R. Civ. P. 26(c)(1)(G) states that “[t]he court may, for good cause, issue an order...requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way....”). Local Rule 26.2 states that “[t]he court may for good cause shown enter an order directing that one or more documents be filed under seal.”

15. Good cause to seal confidential information exists where the information contains trade secrets or other sensitive confidential information the economic value of which depends on its secrecy. *Baxter Intern., Inc. v. Abbott Labs.*, 297 F.3d 544, 546-547 (7th Cir. 2002). To show that confidential information constitutes a trade secret, the party seeking to protect its information must show that the information: “(1) is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy and confidentiality.” *Gen. Elec. Co. v. Uptake Tech., Inc.*, 394 F. Supp. 3d 815, 831 (quoting *PrimeSource Bldg. Prods., Inc. v. Huttig Bldg. Prods., Inc.*, 2017 WL 7795125, at *13 (N.D. Ill. Dec. 9, 2017)). See also 18 U.S.C. § 1839(3) (defining trade secret under federal law) and 765 I.L.C.S. 1065/2(d) (defining trade secret under Illinois law).

16. Courts in the Seventh Circuit have found good cause to seal the same types of information that DISH seeks to maintain under seal here. See, e.g., *Celine S.A. v. Partnerships and Unincorporate Associations Identified on Sched. “A”*, No. 24 C 6208, 2025 WL 712484, at *8 (N.D. Ill. Mar. 5, 2025) (granting motion to seal confidential financial information); *Williams-*

Roberts v. Coloplast Corp., No. 2:19-CV-42-JTM-JEM, 2021 WL 3570707, at *2 (N.D. Ind. Feb. 18, 2021) (finding that confidential submissions to regulators that revealed marketing strategies were trade secrets and there was good cause to seal them because the moving party derived economic and competitive value from their secrecy and made efforts to protect the information); *Zotec Partners, LLC v. Texas Radiology Assoc., LLP*, No. 1:19-cv-02287-JPH-DLP, 2019 WL 3818781, at *1 (S.D. Ind. Aug. 14, 2019) (finding good cause to seal documents containing confidential commercial information and sales processes and plans); *Formax Inc. v. Alkar-Rapidpak-MP Equip., Inc.*, No. 11-C-0298, 2013 WL 2452703, at *1-2 (E.D. Wisc. June 5, 2013) (granting motion to seal documents containing confidential marketing strategies and confidential sales and customer information); *Federal Trade Commission v. OSF Healthcare Sys.*, No. 11 C 50344, 2012 WL 1144620, at *3 (N.D. Ill. Apr. 5, 2012) (granting motion to seal after finding that contract terms, pricing, and other information relevant to competitive advantage were trade secrets); *SmithKline Beecham Corp. v. Pentech Pharm., Inc.*, 261 F. Supp. 2d 1002, 1008 (N.D. Ill. 2003) (finding good cause to seal portions of a document containing trade secret information that “might give other firms an unearned competitive advantage” due to the information having “become caught up in litigation and as a result having become filed in court”).

DISH’s Trade Secret or Confidential Commercial Information Submitted by T-Mobile

17. The redactions on pages 6 and 11 of Ms. Yu’s Declaration contain confidential information relating to structured data for Boost and DISH’s internal business strategies.

18. Exhibit 3 is a letter from T-Mobile’s counsel to DISH’s counsel. The redactions on pages 3, 5, 6, 7, and 8 of Exhibit 3 contain confidential information relating to DISH’s wireless technology, internal business decisions, Boost structured data, and network performance.

19. Exhibit 5 consists of email correspondence between DISH's counsel and counsel for T-Mobile and Plaintiffs relating to information recorded by Boost structured data.

20. Exhibit 19 is a presentation that DISH produced to Plaintiffs and designated Highly Confidential-AEO. This presentation contains confidential information relating to DISH's retail mobile wireless strategy, pricing, marketing, and subscriber retention and acquisition.

21. Exhibit 22 is a document that DISH produced to Plaintiffs and designated Highly Confidential-AEO. This document contains confidential information relating to DISH's 5G network buildout.

22. Exhibit 23 is a presentation that DISH produced to Plaintiffs and designated Highly Confidential-AEO. This presentation contains confidential information relating to DISH's retail mobile wireless strategy, pricing, marketing, and subscriber retention and acquisition.

23. Exhibit 32 is a presentation that DISH produced to Plaintiffs and designated Highly Confidential-AEO. This presentation contains confidential financial information and confidential information relating to DISH's retail mobile wireless strategy and subscriber retention and acquisition.

24. Exhibit 33 is a presentation that DISH produced to Plaintiffs and designated Highly Confidential-AEO. This presentation contains confidential information relating to DISH's retail mobile wireless strategy, pricing, marketing, and subscriber retention and acquisition.

25. Exhibit 36 is a document that DISH produced to Plaintiffs and designated Confidential. This document contains confidential information relating to DISH's 5G network buildout and spectrum deployment.

DISH's Trade Secret or Confidential Commercial Information Submitted by DISH

26. The redacted portion of Mr. Blum's Declaration contains confidential information relating to the composition of DISH's total number of retail mobile wireless subscribers. The

redaction on page 21 of DISH's Memorandum in Opposition contain the same confidential information.

27. The redacted portions of Mr. Hastings's Declaration and Exhibit A to his Declaration contain confidential information relating to the amounts charged to DISH by its vendor Lighthouse for eDiscovery services. Public disclosure of this information would harm DISH's relationship with Lighthouse, cause reputational damage to DISH, and affect DISH's ability to obtain eDiscovery services. Additionally, public disclosure of this information would harm Lighthouse by allowing Lighthouse's competitors to determine the amount it charges DISH for eDiscovery services, giving those competitors an undue advantage when competing with Lighthouse in the competitive eDiscovery services market. The redactions on pages 16-17 of DISH's Memorandum in Opposition and on page 9 of T-Mobile's Reply contain the same confidential information.

Good Cause Exists to Maintain the Seal

28. The DISH information provisionally filed under seal by DISH and T-Mobile contained DISH's confidential commercial information, including confidential information relating to internal business strategies; retail mobile wireless pricing, strategy, and marketing; subscriber acquisition and retention; 5G network buildout; spectrum acquisition and deployment; and DISH's contract with its eDiscovery vendor Lighthouse. Public disclosure of this information, from which DISH derives economic and competitive value, could cause substantial competitive harm to DISH and place it at a competitive disadvantage in the retail mobile wireless market. Declaration of Jeffrey H. Blum ¶ 18. DISH takes reasonable measures to safeguard the confidentiality of this information. *Id.* ¶ 19.

29. The DISH information provisionally filed under seal by DISH and T-Mobile is similar to the types of information that courts in the Seventh Circuit have found good cause to maintain under seal. *See, e.g., Formax*, 2013 WL 2452703, at *1-2 (granting motion to maintain seal over confidential and trade secret business information); *OSF Healthcare Sys.*, 2012 WL 1144620, at *3 (granting motions to maintain seal over confidential information that would reveal negotiation strategies and contract provisions).

Conclusion

Wherefore, DISH respectfully requests the Court grant this motion and enter an order finding good cause to maintain the seal for documents containing DISH's trade secret and confidential commercial information provisionally sealed by the Court.

Dated: May 19, 2025

Respectfully submitted,

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Attorneys for non-party DISH Network Corporation (“DISH”)

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2025, I electronically filed a copy of the foregoing through the Court's CM/ECF system, which will send notifications of the filing to all counsel of record.

/s/ Monica McCarroll

Monica McCarroll